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Franchise Tax Board

U.S. BANKRUPTCY COURT
FILED
NEWARK, NJ

2023 DEC 28 A 8:25

JEANNE A. NAUGHTON
BY: 
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF FRESNO
11

12
13 **BED BATH & BEYOND INC.,**

14 Plaintiff,

15 v.

16 **CALIFORNIA FRANCHISE TAX**
17 **BOARD,**

18 Defendant.
19

Case No. 22CECG02165

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S COUNSEL'S MOTION TO
BE RELIEVED AS COUNSEL**

Date: January 3, 2024
Time: 3:30 p.m.
Dept: 402
Judge: The Honorable Kristi Culver
Kapetan
Trial Date: March 20, 2024
Action Filed: July 27, 2022

20
21 Defendant California Franchise Tax Board (FTB) does not oppose the motion to be relieved
22 as counsel filed by attorneys Timothy Gustafson, Eric Tresh, and Laurin McDonald of the law
23 firm of Eversheds Sutherland. FTB is not aware of any reason why the Eversheds firm should be
24 required to continue representing Bed Bath & Beyond, given that Bed Bath & Beyond has not
25 authorized Eversheds to represent it following the bankruptcy filings and Bed Bath & Beyond is
26 apparently not responding to communications from Eversheds. (Declaration in support of motion
27 dated November 20, 2023.)
28

1 Bed Bath & Beyond has been unrepresented since April 23, 2023 when it filed its
2 bankruptcy petition—a debtor-in-possession must act affirmatively to authorize attorneys to
3 represent it after a bankruptcy petition is filed (11 U.S.C. § 327; Fed. R. Bankr. Proc.; D.N.J.
4 Local Bankruptcy Rule 2014-1(a)), but Bed Bath & Beyond has not authorized any attorneys to
5 represent it in this action.¹ As a corporation, Bed Bath & Beyond cannot represent itself and must
6 be represented by licensed counsel. (*CLD Construction Inc. v. City of San Ramon* (2004) 120
7 Cal.App.4th 1141, 1145-46.) A trial court may dismiss an action if an unrepresented corporation
8 does not obtain counsel within a reasonable time. (*Ibid.*) If this Court grants the Eversheds
9 firm's motion to withdraw and Bed Bath & Beyond does not authorize any other licensed
10 attorney(s) to represent it as counsel, then FTB intends to move to dismiss on that basis and/or for
11 failure to prosecute this action.

12 Dated: December 19, 2023

Respectfully submitted,

13 ROB BONTA
14 Attorney General of California
15 Craig D. Rust
16 Supervising Deputy Attorney General

17 /s/ *Michael.Sapoznikow*

18 MICHAEL SAPOZNIKOW
19 Supervising Deputy Attorney General
20 Attorneys for Defendant California
21 Franchise Tax Board

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28 ¹ The filings in D.N.J. bankruptcy case no. 23-13359-VFP, are available at
<https://restructuring.ra.kroll.com/bbby/Home-DocketInfo>.

DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: **Bed Bath & Beyond Inc. v. California Franchise Tax Board**
No.: **22CECG02165**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 19, 2023, I served the attached **DEFENDANT'S RESPONSE TO PLAINTIFF'S COUNSEL'S MOTION TO BE RELIEVED AS COUNSEL** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Timothy Gustafson Eversheds Sutherland (US) LLP 500 Capitol Mall, Suite 1750 tingustafson@eversheds-sutherland.com Attorney of record for Bed Bath & Beyond before its bankruptcy	Eric Tresh Laurin McDonald Eversheds Sutherland (US) LLP 999 Peachtree Street NE, Suite 2300 Atlanta, GA 30309 erictresh@eversheds-sutherland.com laurinmcdonald@eversheds-sutherland.com Attorneys of record for Bed Bath & Beyond before its bankruptcy
Joshua A. Sussberg Emily E. Geier Derek I. Hunter Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022 joshua.sussberg@kirkland.com emily.geier@kirkland.com derek.hunter@kirkland.com Debtors' Counsel	Michael D. Sirota Warren A. Usatine Felice R. Yudkin Cole Schotz P.C. Court Plaza North, 25 Main Street Hackensack, NJ 07601 msirota@coleschotz.com wusatine@coleschotz.com fyudkin@coleschotz.com Debtors' Counsel

Fran B. Steele Alexandria Nikolinos Bankruptcy Trustee Martin Luther King, Jr., Federal Building 50 Walnut St # 3017 Newark, NJ 07102 fran.b.steele@usdoj.gov <u>Alexandria.nikolinos@usdoj.gov</u> Bankruptcy Trustee	Bed Bath & Beyond Inc. 650 Liberty Avenue Union, NJ 07083
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 19, 2023, at Sacramento, California.

J. Lemus-Arreola

Declarant

/s/ J. Lemus-Arreola

Signature

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